

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Oakland Unified School District)	File No. SLD-202873
Oakland, California)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: April 1, 2002

Released: April 4, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Before the Telecommunications Access Policy Division is a Request for Review filed by Oakland Unified School District (Oakland), Oakland, California.¹ Oakland seeks review of the decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) to deny one of Oakland's Funding Year 3 requests for discounts under the schools and libraries universal service support mechanism.² For the reasons discussed below, we deny the Request for Review and affirm SLD's decision.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ The Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470,⁴ which is posted to the Administrator's website for all

¹ Letter from David L. Wilner, Oakland Unified School District, to Federal Communications Commission, filed November 21, 2001 (Request for Review).

² See Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

potential competing service providers to review.⁵ After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.⁶ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. On May 26, 2000, SLD issued a Funding Commitment Decision Letter that denied Funding Request Number (FRN) 453945, a request for discounted telecommunications services, citing a Funding Year 3 FCC Form 470 for support.⁷ SLD found that "[t]he Form 471 application was signed and/or submitted prior to the expiration of the 28-day waiting period from the day of the posting of the Form 470 to the SLD Web Site."⁸ Oakland appealed to SLD.⁹ In its appeal, Oakland stated that FRN 453945 sought service pursuant to a multi-year contract that had been competitively bid by the posting of an FCC Form 470 in Funding Year 2.¹⁰

4. On October 26, 2001, SLD denied the appeal.¹¹ SLD again found that Oakland had violated competitive bidding requirements because it signed its service contract before the end of the 28-day waiting period.¹² SLD found that the January 11, 1999 Contract Award Date (CAD) for FRN 453945 preceded the January 3, 2000 Allowable Contract Date (ACD) for the Funding Year 3 FCC Form 470 that the FRN cited for support, App. No. 268560000263360.¹³ SLD also considered whether FRN 453945 was supported by the Funding Year 2 FCC Form 470 cited by Oakland in its appeal to SLD, FCC Form 470 Universal Service Control Number (USCN) 52114000122212.¹⁴ SLD found that this FCC Form 470 had an ACD of February 11,

⁵ 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

⁶ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

⁷ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Eugene Stovall, Oakland Unified School District, dated May 26, 2000, at 5 (Funding Commitment Decision Letter).

⁸ *Id.*

⁹ Letter from Eugene Stovall, Oakland Unified School District, to Schools and Libraries Division, Universal Service Administrative Company, filed June 19, 2000 (Appeal to SLD), at 1-2.

¹⁰ *Id.* at 2.

¹¹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Eugene Stovall, Oakland Unified School District, dated October 26, 2001 (Administrator's Decision on Appeal).

¹² *Id.* at 2.

¹³ *Id.*

¹⁴ *Id.*

1999, which was still later than the CAD of FRN 453945.¹⁵ SLD therefore concluded that the competitive bidding requirements had not been satisfied and denied the appeal on those grounds.¹⁶

5. On the same day that SLD issued its decision denying the appeal, Oakland submitted to SLD supplementary evidence.¹⁷ Following the issuance of the appeal decision, Oakland filed the pending Request for Review, asserting that the additional evidence supports its appeal.¹⁸

6. Based on our review of the record, we affirm SLD's decision to deny funding of FRN 453945. The record demonstrates that the CAD was January 11, 1999, a date confirmed by a copy of the contract in the record.¹⁹ This CAD was well before the ACD of either of Oakland's Funding Year 3 FCC Form 470s.²⁰ This CAD also predates the ACD of Oakland's Funding Year 2 FCC Form 470.²¹ SLD therefore correctly denied funding on the grounds of a competitive bidding violation.

7. In its Request for Review, Oakland argues that SLD did not take into account a letter from Pacific Bell that Oakland submitted to SLD as supplementary evidence around October 26, 2001.²² Oakland asserts that the letter demonstrates that Pacific Bell was the only other potential bidder, that it chose not to bid for reasons unrelated to the bidding process, and that Oakland thus obtained the lowest price possible and fulfilled the objective of the competitive bidding process.²³ Because Oakland submitted the letter to SLD long after the period for

¹⁵ *Id.* Applicants who properly bid a multi-year contract by posting an FCC Form 470 are not required to rebid the contract in later years. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 6732, 6736, para. 10 (Com. Car. Bur. 1999) ("We conclude that permitting a school or library to commit to a long-term contract after participating in the competitive bidding process does not compromise the benefits derived from competition. As long as all providers have had the opportunity to compete for the same contract, schools or libraries can enter into renewable contracts of any length or form, as permitted by state law."). Thus, an applicant may obtain discounts on a multi-year contract awarded in a previous funding year if there was an FCC Form 470 posted in that previous year that supports the contract.

¹⁶ *Id.* at 2-3.

¹⁷ Request for Review, at 1.

¹⁸ *Id.*

¹⁹ See Contract, TCG San Francisco, at 1 (indicating signature date of January 11, 1999).

²⁰ See FCC Form 471, Oakland Unified School District, filed January 19, 2000 (Oakland Form 471), at 11 (CAD of January 11, 1999); FCC Form 470, Oakland Unified School District, App. No. 268560000263360, filed December 6, 1999 (specifying ACD of January 3, 2000); FCC Form 470, Oakland Unified School District, App. No. 962530000284256, filed December 20, 1999 (specifying ACD of January 17, 2000).

²¹ FCC Form 470, Oakland Unified School District, USCN 521140000122212, filed January 14, 1999 (specifying ACD of February 22, 1999).

²² Request for Review, at 1.

²³ Request for Review, at 1-2, Attachment (Letter from Robert Cambell, Pacific Bell, to George McDonald, Schools and Libraries Division, Universal Service Administrative Company, dated October 26, 2001).

appealing the Funding Commitment Decision Letter had ended, we find that it is not properly part of the record before SLD.²⁴ Indeed, because it was submitted on the day that the Administrator's Decision on Appeal was issued, SLD could not possibly have considered it. Moreover, because we do not, in general, consider material not in the record before SLD, we find that it is not properly part of the record before us for review.²⁵ We therefore do not address its significance.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Oakland Unified School District, Oakland, California, on November 21, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

²⁴ 47 C.F.R. § 54.720.

²⁵ *Request for Review by Children's Home Society, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-183026, CC Dockets No. 96-45 and 97-21, Order, DA 01-2795, para. 8 (Com. Car. Bur. rel. December 4, 2001).